TPPT SDN BHD

v.

ASAS GABUNGAN SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
MOHAMAD ARIFF YUSOF J
[ORIGINATING MOTION NOS: R3(1)-25-210-2006
& R3(1)-25-359-2006]
12 MARCH 2010

ARBITRATION: *Award - Setting aside - Irregularity in proceedings - Allegation of - Whether arbitrator acted unfairly and in breach of the rules of natural justice - Whether there was manifest error of law on face of award - Cairns Energy India Pty Ltd & Anor v. Government of India*

The two applications herein (R1-25-210-2006) and (R3-25-359-2006) were heard together. The subject matter was related to interim awards handed down by the arbitrator (i) the award dated 18 May 2006 where the arbitrator had ruled that he had no jurisdiction to proceed with the arbitration because *inter alia* TPPT had failed to comply with cls. 47.1 and 47.3 of the relevant conditions of contract. This ruling was made in relation to an attempt by TPPT to include a proposed counterclaim in the arbitration; (ii) the award dated 29 September 2006 where the arbitrator likewise ruled that he no jurisdiction because the AGSB had also failed to comply with the same cls. 47.1 and 47.3. This ruling was made upon a preliminary issue raised by TPPT, which was that since AGSB had not complied with these requirements (termed 'conditions precedent') the reference of its claim to arbitration was premature. The ultimate outcome of both interim awards was therefore unfavourable to both TPPT and AGSB. Against this background, the parties filed these two separate actions for several reliefs. In the first suit (210-06), TPPT applied for the award dated 18 May 2006 to be set aside and an order that the arbitrator be removed and the arbitration agreement be set aside. In the second suit (359-06) AGSB applied for an order that the award dated 29 September 2006 be set aside, and the award be remitted back to the arbitrator to proceed with the hearing of the arbitration, on the ground that the arbitrator had committed error of law on the face of the award.

Held (dismissing R3(1)-25-210-06 and R3(1)-25-359-06):

(1) An arbitral award should not be upset unless the error is manifest (*Cairns Energy India Pty Ltd & Anor v. Government of India*). Parties have chosen to arbitrate, and a decision of an arbitrator chosen by the parties, and entrusted with power to decide a dispute submitted to him is ordinarily not liable to be challenged on the ground that it is erroneous. The award is the decision of a domestic tribunal chosen by the parties, and the civil courts which are entrusted with the power to facilitate arbitration and to effectuate the awards, cannot exercise appellate powers over the decision. Wrong or right decision is binding if it be reached fairly after giving adequate opportunity to the parties to place their grievance in the manner provided by the arbitration agreement. (para 31)

(2) It was argued herein that there exists an element of technical misconduct by the arbitrator deciding on a matter not raised by either of the parties, in relation to his holding on cl. 47.3. By this argument, there had been an irregularity in the proceedings and the arbitrator had acted unfairly and in breach of the rules of natural justice by not according proper opportunity for TPPT to reply. Nevertheless, this was not the only ground; the arbitrator had also accepted that the counterclaims could be brought if they were 'true' or 'pure' defences to the claim. He found seven heads of counterclaim not to be so. This conclusion fell within the area of findings of fact or at any rate mixed with fact and law, which should be respected. On these grounds, the interim award should not be disturbed. (paras 32 & 33)

(3) As for the second interim award, although the element of misconduct did not arise in the same manner since it was TPPT that submitted expressly on the effect of cl. 47.3, the arbitrator's finding on the facts there had not been compliance with the conditions precedent by AGSB should not be reversed. On the facts, there did not appear to be any manifest error of law on the face of the award. (paras 34 & 35)

(4) In the premises, both interim awards should be allowed to stand. The parties were at liberty to proceed by complying with the conditions precedent required. It was not as if recourse was totally shut out to either of the parties. (para 36)

Case(s) referred to:

Cairn Energy India Pty Ltd & Anor v. The Government of India [2010] 2 CLJ 420 CA ***(refd)***

Chai Ming v. The Overseas Assurance Corporation Ltd [1962] 1 LNS 20 HC ***(refd)***

Champsey Bhara & Co v. Jivraj Baloo Spinning and Weaving Co [1923] AC 480 ***(refd)***

FR Absalom Ltd v. Great Western (London) Garden Village Society Ltd [1933] AC 592 ***(refd)***

Hartela Contractors Ltd v. Hartecon JV Sdn Bhd & Anor [1999] 2 CLJ 788 CA ***(refd)***

Intelek Timur Sdn Bhd v. Future Heritage Sdn Bhd [2004] 1 CLJ 743 FC ***(refd)***

Pembinaan LCL Sdn Bhd v. SK Styrofoam (M) Sdn Bhd [2007] 3 CLJ 185 CA ***(refd)***

Sami Mousawi Utama Sdn Bhd v. Kerajaan Negeri Sarawak [2004] 2 CLJ 186 CA ***(refd)***

Sharikat Pemborong Pertanian & Perumahan v. Federal Land Development Authority [1969] 1 LNS 172 HC ***(refd)***

Union of India v. Rallia Ram AIR [1963] SC 1685 ***(refd)***

(Originating Motion No: R3(1)-25-210-2006)
For the appellant - Sanjay Mohanasundram; M/s Kadir Andri & Partners
For the respondent - Joy W Appukuttan; M/s SK Yeoh & Partners

(Originating Motion No: R3(1)-25-359-2006)
For the appellant - Joy W Appukuttan; M/s SK Yeoh & Partners
For the respondent - Sanjay Mohanasundram; M/s Kadir Andri & Partners

Reported by Suhainah Wahiduddin

JUDGMENT

Mohamad Ariff Yusof J:

[1] This matter before me concerns two applications which were heard together. In R1-25-210-2006 TPPT Sdn Bhd ("TPPT") is the applicant while Asas Gabungan Sdn Bhd ("AGSB") is the respondent; whereas in R3(1)-25-359-2006 AGSB is the applicant and TPPT the respondent. The subject matter relates to interim awards handed down by the Arbitrator, one dated 18 May 2006 and the other 29 September 2006. In the interim award of 18 May 2006, the Arbitrator ruled that he had no jurisdiction to proceed with the arbitration because *inter alia* TPPT had failed to comply with cls. 47.1 and 47.3 of the relevant conditions of contract. This ruling was made in relation to an attempt by TPPT

A to include a proposed counterclaim in the arbitration. There were three other grounds mentioned by the Arbitrator in concluding as he did, which I shall refer to shortly. In the case of the interim award dated 29 September 2006 the Arbitrator likewise ruled that he had no jurisdiction because the claimant (AGSB) had also
B failed to comply with the same cls. 47.1 and 47.3. This ruling was made upon a preliminary issue raised by TPPT, which was that since the claimant had not complied with these requirements, (termed "conditions precedent"), the reference of its claim to arbitration was premature. The ultimate outcome of both interim
C awards is therefore unfavourable to both claimant and respondent in the arbitration. The arbitration proceeding was initiated by AGSB as the claimant and the Arbitrator ruled the claimant had no jurisdiction since it had not complied with cls. 47.1 and 47.3 of the conditions of contract. In the case of TPPT, the
D respondent in the arbitration, it had wanted to include its counterclaim in the arbitration, but this attempt was also ruled against its favour on the same ground, namely TPPT had *inter alia* also not complied with these conditions precedent to the conferring of jurisdiction on the Arbitrator. It seems to me that on
E these brief primary facts, TPPT, having lost on the attempt to include the counterclaim, raised a preliminary objection subsequently on the same ground that it lost, but succeeded in persuading the Arbitrator that he also had no jurisdiction to proceed with the main claim since the claim was premature based
F on the same ground.

[2] The strange aspect of this present matter is both parties intended to have their dispute referred to arbitration, but both have been unsuccessful and precluded from proceeding further.
G According to TPPT's argument, the parties had not even raised cls. 47.1 and 47.3 before the Arbitrator, and yet the Arbitrator decided he had no jurisdiction *inter alia* on this ground in his interim award of 18 May 2006. In this regard, the issue of "misconduct" on the Arbitrator's part becomes relevant.

H **[3]** Against this background, the parties have filed these two separate actions for several reliefs. In the first suit (210-06), where TPPT is applicant, TPPT is applying for (a) in declaration that the appointment of the Arbitrator is void on the ground of uncertainty,
I (b) that the award dated 18 May 2006 be set aside and (c) an order that the Arbitrator be removed and the arbitration agreement be set aside. (In the course of submission I was

informed TPPT was dropping ground (a)). In the second suit (359-06), where AGSB is applicant, it is applying for an order that the award dated 29 September 2006 be set aside, and the award be remitted back to the Arbitrator to proceed with the hearing of the arbitration, on the ground that the Arbitrator had committed error of law on the face of the award.

The Brief Background Facts

[4] TPPT, a subsidiary of Bank Negara Malaysia, had engaged AGSB as "Project Development Manager" under two memoranda of understanding dated 1 April 1998 for two projects in Sabah, namely (a) a proposed mixed development project in the area of Jalan Tuaran, Kota Kinabalu ("the PJ 1 Project") and (b) a proposed mixed development project in the area of Kampung Ketiau, Putatan, Penampang ("the PJ 3 Project"). The MOUs were subsequently followed up by three contracts, namely the main building contract, the external works and services contract and the earthworks contract. The first two contracts relate to the PJ 1 project, whereas the third relates to the PJ 3 contract. The dispute referred to arbitration concerns TPPT's alleged liability to pay AGSB sums under variation orders for the PJ 1 project, and an alleged liability to pay AGSB a balance sum under the Earthworks contract for the PJ 3 project. The sums claimed under the variation orders amount to RM644,402.45, and a balance sum for the earthworks contract amounting to RM 822,525.50.

[5] The notice to concur in the appointment of an Arbitrator was sent by AGSB by letter dated 5 January 2004 and addressed to the managing director of TPPT. I quote the material parts:

> 2. Our clients have instructed us that disputes have arisen between TPPT Sdn Bhd and them in connection with the above projects and it has been mutually agreed that the disputes be referred to arbitration as parties are unable to resolve amicably.
>
> 3. It is proposed that the following disputes or differences be referred to arbitration in accordance with Clause 47 of the Conditions of Contract:
>
> (i) Whether TPPT Sdn Bhd is liable to pay Asas Gabungan Sdn Bhd for the variation orders amounting to RM644,402.45 in relation to the Proposed Mixed

A Housing Development ... at Mile 13, Jalan Tuaran, Telipok, Kota Kinabalu (Putera Jaya 1) as certified by the consultants in the draft Final Account dated 17.9.2002;

(ii) Whether TPPT Sdn Bhd is liable to pay Asas Gabungan Sdn Bhd the balance sum of RM822,525.50 in relation to the earthworks carried out on the Proposed Mixed Housing Development ... at Jalan Kampung Katiau, Penampang, Kota Kinabalu ... as certified by the consultants in the draft Final Account dated 15.4.2002 ...

C **[6]** It must be stressed that this letter to concur in the appointment of an Arbitrator refers to a mutual agreement between the parties that the disputes be referred to arbitration.

[7] The Notes of Proceedings of Preliminary Meeting No. 1 held on 23 June 2005 confirmed this agreement. Note No. 2 referred D to the mutual consent being for the disputes "concerning the 3 agreements." The arbitration rules applicable was also agreed as the IEM Arbitration Rules (2003).

[8] Nevertheless, TPPT as respondent, made it known that it E had counterclaims arising from a MOU between the parties concerning the acts of the claimant as project development manager in preparing feasibility studies, allegedly done negligently and thereby resulting in additional costs having to be borne by TPPT. Even at this stage, AGSB noted that disputes arising from F the MOU were different and required to be referred to the K.L. Regional Centre for Arbitration. The following appears in the Notes:

G Arbitrator stated that if this is the case it appears that is a dispute on the jurisdiction of this Tribunal to arbitrate the counterclaim. This will be a matter for the parties to resolve or submit in their pleadings.

[9] On 28 February 2006, TPPT wrote to AGSB requesting to include counterclaims arising from the MOU to be included in the H arbitration. This was opposed by AGSB. The Arbitrator then heard submissions on his jurisdiction to hear the counterclaim, leading to the handing down of the first interim award of 18 May 2006.

I

1st Interim Award On Jurisdiction

[10] The Arbitrator held he had no jurisdiction to hear the counterclaims on two grounds summarised as follows:

> (a) Conditions precedent to arbitration ... have not been fulfilled.
>
> (b) The proposed counterclaims were raised by the Respondent only after the Arbitrator was appointed.
>
> Consequently Jurisdiction has not been conferred on the Arbitrator for the proposed counterclaims ...

[11] As for the conditions precedent, the learned Arbitrator relied on cls. 47.1 and cls. 47.3, and concluded:

> (i) Disputes of any kind which are connected with the contract to be referred in the first instance to the ER [Employer's Representative] for a decision.
>
> (ii) Following step (i) above if the dispute remains unresolved the contractor may give notice of arbitration.
>
> (iii) Reference of the disputes to an Arbitrator following steps (i) and (ii).

[12] Both counsel are agreed that this issue relating to cl. 47.1 and 47.3 was not raised by the parties; the Arbitrator took it upon himself to raise it and then decided on this basis. Additionally, what it means is TPPT, being the employer, will have to refer its counterclaims to its own general manager (as the appointed ER) first for a decision, which was not done.

[13] According to the Arbitrator, steps (i) and (ii) are conditions precedent to jurisdiction being conferred, and there was no evidence to establish these were complied with. Additionally, these counterclaims were raised after his appointment, with the disputes to be arbitrated defined by AGSB's notice of arbitration dated 5 January 2004, and these were limited to the disputes under the three contracts, not the MOU.

[14] It is important to appreciate that the learned Arbitrator did not merely base his decision on cl. 47.3, which he indicated did not expressly provide for disputes to be referred to the Arbitrator by the employer. Nevertheless, he added:

> Clause 47.3 does not expressly provide for disputes to be referred to arbitration by the Employer. However, even if he has no right

A to initiate arbitration nothing in the Arbitration Agreement (Clause 47) operate to bar him from making counterclaim based on his defence to claims. (para 1.8, Interim Award).

[15] Quoting Mustill & Boyd, and the requirement that the counterclaim should be in the nature of a "true defence", he concluded that the proposed first seven heads of counterclaim did not disclose a true or pure defence to the claimant's claim. As for the seven heads of counterclaim, he held it was not clear whether it was a true defence, and more information would be required before he ruled on it. On this he reserved his ruling pending clarification.

[16] I now turn to consider the relevant law.

The Applicable Law

[17] In *Intelek Timur Sdn Bhd v. Future Heritage Sdn Bhd* [2004] 1 CLJ 743, the Federal Court of Malaysia regarded as "well settled" law that an arbitration award is final, binding and conclusive and can only be challenged in exceptional circumstances.

[18] Siti Norma FCJ states in this case:

> The law regarding the effect of an arbitration's award is well settled in that the award is final, binding and conclusive and can only be challenged in exceptional circumstances. As such if an Arbitrator had erred by drawing wrong inferences of fact from the evidence before him be it oral or documentary that in itself is not sufficient for the setting aside of his award. "It would be contrary to all the established legal principles relating to arbitration if an award based upon the evidence presented were liable to be reopened on the suggestion that some of the evidence had been "misapprehended and misunderstood." per Raja Azlan Shah J (as he then was) in *Sharikat Pemborong Perumahan v. Federal Land Development Authority* [1969] 1 LNS 172; [1971] 2 MLJ 210." (at page 407)

[19] As made clear from the above passage, error in drawing wrong inferences of fact from the evidence is not in itself a sufficient basis to set aside an award. As for "misconduct", in the sense understood in arbitration law, *Sharikat Pemborong Pertanian & Perumahan v. Federal Land Development Authority* [1969] 1 LNS 172, describes it in the following terms:

> In the law of arbitration misconduct is used in its technical sense as denoting irregularity and not moral turpitude. It includes failure to perform the essential duties which are cast on an Arbitrator as such, for instance, failure to observe the rules of natural justice, appearance of bias or partiality. It also includes any irregularity of action which is not consonant with the general principles of equity and good conscience. These illustrations are not meant to be exhaustive. But failure to analyse and appraise the evidence does not vitiate the award on the ground of misconduct. It is only when the evidence is material, relevant and had gone to affect the award that the award will be vitiated. In my judgment, the Plaintiff's complaint is sustainable only if the failure to do so had occasioned a miscarriage of justice that is apparent on the face of the award ... . (At page 211 of the report)

[20] It is not misconduct to make erroneous findings of law or fact.

[21] *Halsbury's Laws of England* (4th edn, 1991, vol. 2) summarises "misconduct" thus:

> Misconduct has been described as "such a mishandling of the arbitration as is likely to amount to some substantial miscarriage of justice". Most cases depend as much upon the terms of the reference and on the surrounding circumstances as upon the conduct of the Arbitrator or umpire, and it is therefore difficult to provide an exhaustive definition of the term.
>
> When an Arbitrator fails to comply with the terms, express or implied, of the arbitration agreement, that failure will amount to misconduct. But, whether or not he complies with those terms, he will misconduct himself if he acts in a way that is contrary to public policy. In particular, it would be misconduct to act in a way which is, appears to be, unfair. Misconduct committed in good faith is sometimes referred to as "technical misconduct", the all allegations of misconduct asserts the breach of duty. It is not misconduct to make erroneous findings of law or fact.
>
> Misconduct has been found to have occurred in the following instances, some of which would also give the court jurisdiction to intervene or some other grounds: (1) where the Arbitrator or umpire fails to decide all matters which were referred to him; (2) whereby his award the Arbitrator or umpire purports to decide matters which have not in fact been included in the agreement of reference; (3) where the award is uncertain; (4) whether has been irregularity in the proceedings; but with the complaining party continues with the reference after knowing of the irregularity, he may impliedly agree to that manner of proceeding, or may waive

A his right to object; (5) where the Arbitrator or umpire has acted unfairly and in breach of the rules of natural justice; (6) where the Arbitrator or umpire delegates any part of its authority, whether to a stranger or to one of the parties, or even to a co-arbitrator; (7) where the Arbitrator or umpire excepts the hospitality of one of the parties, being hospitality offered with the intention of influencing his decision or actually influencing it; (8) where the Arbitrator or umpire appears to be biased has an interest in the subject matter of the reference; (9) where the Arbitrator or umpire takes a bribe from either party. (At para 694 of Halsbury's)

[22] More generally, in the recent Court of Appeal decision in *Pembinaan LCL Sdn Bhd v. SK Styrofoam (M) Sdn Bhd* [2007] 3 CLJ 185, Gopal Sri Ram JCA regarded it as "the unanimous view" that the High Court does not enjoy appellate jurisdiction under the Arbitration Act:

> It is the unanimous view of all the authorities that the High Court in exercising its statutory jurisdiction under the Arbitration Act 1952 does not enjoy appellate jurisdiction. See, for example, *Puri Construction Pvt Ltd v. Union of India* AIR [1989] SC 777, where it was held that:
>
> ... a court while examining the objections taken to an award filed by an Arbitrator is not required to examine the correctness of the claim on merits. The court cannot sit in appeal over the views of the Arbitrator by re-examining and reassessing the materials. (At page 124)

[23] *Pembinaan LCL* also refers to a useful decision of the Indian Supreme Court, *Union of India v. Rallia Ram* AIR [1963] SC 1685 where the following passage appears:

> An award being a decision of an Arbitrator whether a lawyer or a layman chosen by the parties, and entrusted with power to decide a dispute submitted to him is ordinarily not liable to be challenged on the ground that it is erroneous ... The award is the decision of a domestic tribunal chosen by the parties, and the Civil Courts which are entrusted with the power to facilitate arbitration and to effectuate the awards, cannot exercise appellate powers over the decision. Wrong or right the decision is binding if it be reached fairly after giving adequate opportunity to the parties to place their grievance in the manner provided by the arbitration agreement. (per Shah J)

[24] See also *Hartela Contractors Ltd v. Hartecon JV Sdn Bhd & Anor* [1999] 2 CLJ 788; [1999] 2 MLJ 481, another pertinent judgment by Gopal Sri Ram JCA, where it is emphasized that "the jurisdiction to set aside or remit an Arbitrator's award whether at common law or under statute is one that should be exercised with great care and a proper sense of responsibility." (at p. 489)

[25] In this context, the case law supports only a limited jurisdiction to intervene. Lack of appraisal of the law and the evidence is not *per se* a good ground to set aside or remit for reconsideration by the arbitral tribunal. There has to be a "serious failure" to analyse and appraise "material" and "relevant" evidence: *Sami Mousawi Utama Sdn Bhd v. Kerajaan Negeri Sarawak* [2004] 2 CLJ 186 (Court of Appeal). See also *Sharikat Pemborong Pertanian & Perumahan v. Federal Land Development Authority* [1969] 1 LNS 172; [1971] 2 MLJ 210: " ... failure to analyse, and appraise the evidence does not vitiate the award on the ground of misconduct. It is only when the evidence is material, relevant and had gone to affect the award that the award will be vitiated." (At p. 211)

[26] *Sharikat Pemborong Pertanian & Perumahan* also states the general principles to be applied as follows:

> ... this is not a re-hearing ... I am not satisfied that the Arbitrator had drawn wrong inferences of fact from the evidence. Even if he did, that by itself is not sufficient as a ground to warrant setting aside the award. It would be contrary to all established legal principles relating to arbitration if an award based upon the evidence presented were liable to be reopened on the suggestion that some of the evidence had been "misapprehended and misunderstood ..." (per Raja Azlan Shah (as His Majesty then was) at page 211)

[27] Malaysian cases have approved and adopted the principles relating to error of law on the face of the award, as stated, for example, by the Privy Council in *Champsey Bhara & Co v. Jivraj Baloo Spinning and Weaving Co* [1923] AC 480 and the House of Lords in *FR Absalom Ltd v. Great Western (London) Garden Village Society Ltd* [1933] AC 592.

[28] *Champsey Bhara* states:

> An error of law on the face of the award means ... that you can find in the award or a document actually incorporated thereto, as for instance a note appended by the Arbitrator stating the reasons

A for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous. (per Lord Dunedin)

[29] In *Chai Ming v. The Overseas Assurance Corporation Ltd* [1962] 1 LNS 20; [1962] 28 MLJ 282, which applies Chamsey Bhara, the principle is explained further thus: " ... the law is that in determining whether an award should be remitted or set aside on the ground that there is an error of law appearing on the face of it, the court is not entitled to draw any inference as to the finding by the Arbitrator of facts supporting the award, but must take the award at its face value." (per Suffian J (as he then was) at p. 283)

[30] Malaysian cases have generally applied the applicable rules as stated in *Halsbury's Laws of England*, that "where the question referred for arbitration is a question of construction, which is, generally speaking, a question of law, the Arbitrator's decision cannot be set aside only because the court would itself have come to a different conclusion; but if it appears on the face of the award that the Arbitrator has proceeded illegally, as, for instance, by deciding on evidence which was not admissible, or on principles of construction which the law does not countenance, there is error in law which may be ground for setting aside the award." (*Halsbury's Laws* (4th edn), as applied in *Intelek Timur (supra)*).

Application Of The Law To The Facts

[31] Applying these settled principles as most recently reiterated in *Cairn Energy India Pty Ltd & Anor v. The Government of India* [2010] 2 CLJ 420, an arbitral award should not be upset unless the error is manifest. Parties have chosen to arbitrate, and a decision of an Arbitrator chosen by the parties, and entrusted with power to decide a dispute submitted to him is ordinarily not liable to be challenged on the ground that it is erroneous. The award is the decision of a domestic tribunal chosen by the parties, and the civil courts which are entrusted with the power to facilitate arbitration and to effectuate the awards, cannot exercise appellate powers over the decision. Wrong or right the decision is binding if it be reached fairly after giving adequate opportunity to the parties to place their grievance in the manner provided by the arbitration agreement.

[32] It was argued before me that there exists an element of technical misconduct by the Arbitrator deciding on a matter not raised by either of the parties, in relation to his holding on

cl. 47.3. By this argument, there has been an irregularity in the proceedings and the Arbitrator has acted unfairly and in breach of the rules of natural justice by not according a proper opportunity for TPPT to reply. Nevertheless, this was not the only ground; the Arbitrator also accepted that the counterclaims could be brought if they were "true" or "pure" defences to the claim. He found seven of the heads of counterclaim not to be so. This conclusion falls within the area of findings of fact or at any rate mixed fact and law, which should be respected.

[33] On these grounds, I am of the view the interim award should not be disturbed.

[34] Likewise, as for the 2nd interim award, although the element of misconduct does not arise in the same manner since it was TPPT that submitted expressly on the effect of cl. 47.3, the Arbitrator's finding on the facts there had not been compliance with the conditions precedent by AGSB should not be reversed.

> It would be contrary to all the established legal principles relating to arbitration if an award based upon the evidence presented were liable to be reopened on the suggestion that some of the evidence had been "misapprehended and misunderstood" per Raja Azlan Shah J (as he then was) in *Sharikat Pemborong Perumahan v. Federal Land Development Authority* [1969] 1 LNS 172; [1971] 2 MLJ 210 (at p. 407).

[35] On the facts and on this basis, there does not also appear to be any manifest error of law on the face of the award.

[36] In the premises, both interim awards should be allowed to stand. The parties are at liberty to proceed by complying with the conditions precedent required. It is not as if recourse is totally shut out to either of the parties.

[37] As for R3(1)-25-210-06, encl. 1 is dismissed with costs to be taxed, unless agreed.

[38] Similarly, as for R3(1)-25-359-06, encl. 1 is dismissed with costs to be taxed, unless agreed.